

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WEST EDNA ASSOCIATES, LTD.,)

Plaintiff,)

vs.)

TWIN CITY FIRE INSURANCE)
COMPANY, *et al.*,)

Defendants.)

Case No.: 2:19-cv-00607-GMN-BNW

ORDER

Pending before the Court is the Motion to Dismiss, (ECF No. 8), filed by Defendant Twin City Fire Insurance Company (“Twin City”). Plaintiff West Edna Associates, Ltd., doing business as Mojave Electric (“Plaintiff”) filed a Response, (ECF No. 12), and Twin City filed a Reply, (ECF No. 14).

Also pending before the Court is the Motion to Remand, (ECF No. 9), filed by Plaintiff. Twin City filed a Response, (ECF No. 10), and Plaintiff filed a Reply, (ECF No. 13).

Also pending before the Court is Twin City’s Motion for Leave to Supplement its Response to the Motion to Remand, (ECF Nos. 18, 21). Plaintiff filed a Response, (ECF No. 23), and Twin City did not file a reply.

Also pending before the Court is the Motion to Dismiss, (ECF No. 22), filed by Defendant Harris Insurance Services, Inc. (“Harris”). Plaintiff filed a Response, (ECF No. 24), and Harris did not file a reply.¹

Also pending before the Court is Harris’s Motion to Strike, (ECF No. 25). Plaintiff filed a Response, (ECF No. 26), and Harris did not file a reply.

¹ Twin City moves for leave to supplement its Response to Plaintiff’s Motion to Remand “in order to advise the Court that [Plaintiff] has served Twin City through the Nevada Commissioner of Insurance[.]” (Mot. Leave Suppl. Resp. at 1, ECF No. 21). Good cause appearing, Twin City’s Motion for Leave to Supplement its Response to the Motion to Remand, (ECF Nos. 18, 21), is granted.

1 **I. BACKGROUND**

2 This matter arises from an insurance dispute involving a commercial insurance liability
3 policy. (*See* Compl. ¶¶ 5–8, Ex. to 2d Am. Pet. Removal, ECF No. 20-1). Plaintiff alleges its
4 insurance provider, Twin City, wrongfully denied insurance coverage for a lawsuit filed against
5 it in the Eighth Judicial District Court (“state court”). (*See id.* ¶¶ 19, 47). Plaintiff also sues its
6 insurance broker, Harris, for allegedly breaching its duty to timely report a claim to Twin City,
7 on Plaintiff’s behalf. (*Id.* ¶ 64–68). The facts are as follows:²

8 **A. Policies Issued by Twin City to Plaintiff**

9 Through Harris, Plaintiff purchased insurance policy number 00 KB 0229077-11 (the
10 “2011 Policy”) from Twin City. (Compl. ¶ 7). The “Policy Period” of the 2011 Policy was
11 from March 1, 2011 to March 1, 2012. (2011 Policy at 3, Ex. 1 to Twin City MTD, ECF No. 8-
12 1) (providing March 1, 2011 as the “Inception Date” and March 1, 2012 as the “Expiration
13 Date”); (*Id.* at 10) (defining “Policy Period” as the period from the Inception Date to the
14 Expiration Date). The 2011 Policy included four “Coverage Parts” including a “Directors,
15 Officers and Entity Liability Coverage Part” (“D&O Liability Part”). (*Id.* at 45). Relevant here,
16 the D&O Liability Part provided that Twin City “shall pay Loss on behalf of an Insured Entity
17 resulting from an Entity Claim first made against such Insured Entity during the Policy Period
18 or Extended Reporting Period, if applicable, for a Wrongful Act by an Insured Entity.” (*Id.* at
19 19); (Compl. ¶ 8).

22 ² While several of Plaintiff’s allegations rely on policies issued by Twin City in 2011 and 2012, the policies are
23 not included with Plaintiff’s Complaint. Twin City, however, includes the policies as exhibits to its instant
24 Motion to Dismiss. (*See* Exs. 1, 2 to Twin City MTD, ECF Nos. 8-1, 8-2). Additionally, Plaintiff provides the
25 policies as exhibits to its Response. (*See* Exs. 2, 3 to Pl.’s Resp., ECF Nos. 12-2, 12-3). Accordingly, the Court
will consider the policies in determining Twin City’s Motion to Dismiss. *See Coto Settlement v. Eisenberg*, 593
F.3d 1031, 1038 (9th Cir. 2010) (holding that on a motion to dismiss, a court may consider documents outside
the complaint when the contents of the document are alleged in the complaint, the document’s authenticity is not
in question, and there are no disputed issues as to the document’s relevance).

1 The “Insured Entity” was defined as Plaintiff. (*Id.* at 3). The term “Entity Claim” was
2 defined as any:

3 (1) written demand for monetary damages or other civil relief commenced by the
4 receipt of such demand;

5 (2) civil proceeding, including an arbitration or other alternative dispute
6 proceeding, commenced by the service of a complaint, filing of a demand for
arbitration, or similar pleading; or

7 (3) criminal proceeding commenced by the return of an indictment, or formal
8 administrative or regulatory proceeding commenced by the filing of a notice of
charges, or similar document;

9 against an Insured Entity.
10

11 (*Id.* at 20). In addition, the term “Wrongful Act” was defined, in relevant part, as “any actual or
12 alleged . . . error, misstatement, misleading statement, act, omission, neglect, or breach of duty
13 committed by . . . an Insured Entity.” (*Id.* at 40).

14 The Common Terms and Conditions contained a section entitled Notice of Claim that
15 was applicable to “all Liability Coverage Parts,” including the D&O Liability Part. (*Id.* at 9).

16 The Notice of Claim section stated, in relevant part:

17 As a condition precedent to coverage under this Policy, the Insureds shall give the
18 Insurer written notice of any Claim as soon as practicable after a Notice Manager
19 becomes aware of such Claim, but in no event later than sixty (60) calendar days
20 after the termination of the Policy Period, or any Extended Reporting Period as
described in Section IX.

21 (*Id.* at 13). The term Claim as used in the Notice of Claim section included any Entity Claim.
22 (*Id.* at 8, 19).

23 Effective March 1, 2012, Twin City issued policy number 00 KB 0229077-12 to
24 Plaintiff (the “2012 Policy”). (2012 Policy at 3, Ex. 2 to Twin City MTD, ECF No. 8-2). The
25 Policy Period of the 2012 Policy was March 1, 2012 to March 1, 2013. (*Id.*). Twin City

1 submits, and Plaintiff does not dispute, that “[o]ther than the Policy Period, the terms and
2 conditions of the 2012 Policy were the same in all relevant respects to the 2011 Policy.” (Twin
3 City MTD at 4).

4 **B. The Underlying Action**

5 In early 2010, Plaintiff was selected as the electrical subcontractor for the new Las
6 Vegas City Hall construction project (“Project”). (Compl. ¶ 11). Plaintiff’s work included
7 installing the building’s emergency standby power system. (*Id.* ¶ 12). The materials for the
8 emergency standby power system were provided by non-party Cashman Equipment Company
9 (“Cashman”). (*Id.* ¶ 13). On September 30, 2011, Cashman filed a complaint in state court
10 against Plaintiff and several other defendants, including CAM Consulting Co. (the “Underlying
11 Action”). (*Id.* ¶ 19). Cashman alleged that it entered into an agreement with CAM Consulting
12 Co. (“CAM”) whereby Cashman agreed to sell equipment to CAM for the total price of
13 \$755,893.89, to be incorporated into the Project. (Cashman Compl. ¶ 13, Ex. 5 to Twin City
14 MTD, ECF No. 8-5).³ Further, Plaintiff contracted with CAM to purchase the electrical
15 equipment that CAM had agreed to buy from Cashman. (*Id.* ¶ 88). Additionally, Cashman
16 alleged that despite being aware that CAM was purchasing the equipment from Cashman,
17 Plaintiff “refused to issue a joint check payable to both CAM and [Cashman] to pay for the
18 equipment [Cashman] supplied to the Project.” (*Id.* ¶¶ 89-90). Instead, Plaintiff issued payment
19 for the equipment directly to CAM. (*Id.* ¶ 91). Moreover, after receiving the funds to pay
20

21
22 ³ Under Federal Rule of Evidence 201, “[t]he court may judicially notice a fact that is not subject to reasonable
23 dispute because it: (1) is generally known within the court’s territorial jurisdiction; or (2) can be accurately and
24 readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201. A court
25 may “take judicial notice of matters of public record outside the pleadings and consider them for purposes of [a]
motion to dismiss.” *Mir v. Little Co. of Mary Hosp.*, 844 F.2d 646, 649 (9th Cir. 1988) (internal quotation and
citation omitted). Moreover, courts “may take judicial notice of undisputed matters of public record . . .
including documents on file in federal or state courts.” *Harris v. Cty. of Orange*, 682 F.3d 1126, 1131–32 (9th
Cir. 2012). There is no suggestion that the state court documents provided by Twin City as exhibits to its Motion
to Dismiss are incorrect. The Court therefore takes judicial notice of Cashman’s complaint, (ECF No. 8-5), filed
in state court.

1 Cashman from Plaintiff, CAM failed to pay for the equipment. (*Id.* ¶¶ 20, 31). While failing to
2 pay Cashman, CAM allegedly wrote two checks to Plaintiff for the total amount of
3 \$275,636.70. (*Id.* ¶ 92).

4 Cashman brought four causes of action against Plaintiff: (1) foreclosure of surety
5 interest; (2) enforcement of mechanic’s lien release bond; (3) unjust enrichment; and (4)
6 contractor’s license bond claim. (Compl. ¶ 20). Following a bench trial, an appeal, and a
7 reversal by the Nevada Supreme Court, the Underlying Action was settled. (*Id.* ¶ 25). In
8 defending and settling the Underlying Action, Plaintiff alleges it incurred \$1,739,565.54 in fees
9 and expenses. (*Id.* ¶ 26).

10 **C. Plaintiff’s Notice of Claim to Twin City and the Instant Action**

11 Plaintiff alleges that once it “learned the facts and allegations justifying coverage,”
12 Plaintiff, “through [Harris], submitted a timely claim to Twin City.” (*Id.* ¶ 29). “Twin City
13 received notice of [Plaintiff’s] claim on February 25, 2013.” (*Id.* ¶ 31). On December 12, 2013,
14 Twin City denied Plaintiff’s claim. (*Id.* ¶ 33). According to Twin City, the claim was untimely
15 and “the Policy’s contractual liability exclusion precluded coverage.” (*Id.* ¶¶ 34, 36). On April
16 17, 2018, following the settlement of the Underlying Action, Plaintiff “renewed its claim with
17 Twin City.” (*Id.* ¶ 38). However, Twin City denied Plaintiff’s claim reasserting the reasons
18 given in 2013. (*Id.* ¶ 39). Over the course of the following months, Plaintiff provided Twin
19 City with additional documentation supporting its position that it was entitled to coverage. (*Id.*
20 ¶ 40). “[O]n December 7, 2018, Twin City again denied [Plaintiff’s] claim for the same two
21 reasons.” (*Id.* ¶ 41). On January 10, 2019, Plaintiff sent Twin City a letter asserting that, under
22 the facts and Nevada law, Plaintiff was entitled to coverage. (*Id.* ¶ 42). On March 1, 2019,
23 Twin City sent Plaintiff a letter denying coverage “for the same two reasons.” (*Id.* ¶ 43).

24 Plaintiff filed the instant action in state court on March 7, 2019, and Twin City
25 subsequently removed to this Court on the basis of diversity jurisdiction. (*See* Pet. Removal,

1 ECF No. 1). Plaintiff's Complaint states the following causes of action: (1) breach of contract
2 against Twin City; (2) breach of the implied covenant of good faith and fair dealing against
3 Twin City; (3) insurance bad faith against Twin City; and (4) negligence against Harris.

4 **II. LEGAL STANDARD**

5 **A. Motion to Dismiss**

6 Federal Rule of Civil Procedure 12(b)(6) mandates that a court dismiss a cause of action
7 that fails to state a claim upon which relief can be granted. *See N. Star Int'l v. Ariz. Corp.*
8 *Comm'n*, 720 F.2d 578, 581 (9th Cir. 1983). When considering a motion to dismiss under Rule
9 12(b)(6) for failure to state a claim, dismissal is appropriate only when the complaint does not
10 give the defendant fair notice of a legally cognizable claim and the grounds on which it rests.
11 *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). In considering whether the
12 complaint is sufficient to state a claim, the Court will take all material allegations as true and
13 construe them in the light most favorable to the plaintiff. *See NL Indus., Inc. v. Kaplan*, 792
14 F.2d 896, 898 (9th Cir. 1986).

15 The Court, however, is not required to accept as true allegations that are merely
16 conclusory, unwarranted deductions of fact, or unreasonable inferences. *See Sprewell v. Golden*
17 *State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). A formulaic recitation of a cause of action
18 with conclusory allegations is not sufficient; a plaintiff must plead facts showing that a
19 violation is plausible, not just possible. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing
20 *Twombly*, 550 U.S. at 555).

21 "Generally, a district court may not consider any material beyond the pleadings in ruling
22 on a Rule 12(b)(6) motion However, material which is properly submitted as part of the
23 complaint may be considered on a motion to dismiss." *Hal Roach Studios, Inc. v. Richard*
24 *Feiner & Co.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990) (citations omitted). Similarly,
25 "documents whose contents are alleged in a complaint and whose authenticity no party

1 questions, but which are not physically attached to the pleading, may be considered in ruling on
2 a Rule 12(b)(6) motion to dismiss” without converting the motion to dismiss into a motion for
3 summary judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994). Under Federal Rule
4 of Evidence 201, a court may take judicial notice of “matters of public record.” *Mack v. S. Bay*
5 *Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986). Otherwise, if the district court considers
6 materials outside of the pleadings, the motion to dismiss is converted into a motion for
7 summary judgment. *See Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th
8 Cir. 2001).

9 If the court grants a motion to dismiss, it must then decide whether to grant leave to
10 amend. The court should “freely give” leave to amend when there is no “undue delay, bad
11 faith[,] dilatory motive on the part of the movant . . . undue prejudice to the opposing party by
12 virtue of . . . the amendment, [or] futility of the amendment” Fed. R. Civ. P. 15(a); *Foman*
13 *v. Davis*, 371 U.S. 178, 182 (1962). Generally, leave to amend is only denied when it is clear
14 that the deficiencies of the complaint cannot be cured by amendment. *See DeSoto v. Yellow*
15 *Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992).

16 **B. Motion to Remand**

17 District courts have subject matter jurisdiction over: (1) civil actions arising under
18 federal law, and (2) civil actions where no plaintiff is a citizen of the same state as a defendant
19 and the amount in controversy exceeds \$75,000. *See* 28 U.S.C. §§ 1331, 1332(a). A defendant
20 may remove an action to federal court only if the district court has subject matter jurisdiction
21 over the matter. 28 U.S.C. § 1441(a). “Removal statutes are to be ‘strictly construed’ against
22 removal jurisdiction.” *Nevada v. Bank of Am. Corp.*, 672 F.3d 661, 667 (9th Cir. 2012) (quoting
23 *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32 (2002)). The party asserting federal
24 jurisdiction bears the burden of overcoming the presumption against federal jurisdiction.
25 *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

1 **III. DISCUSSION**

2 In order to ensure the Court has subject matter jurisdiction over this matter, the Court
3 will first address Plaintiff's Motion to Remand, (ECF No. 9), followed by Twin City and
4 Harris's (collectively, "Defendants") motions to dismiss and other related motions.

5 **A. Motion to Remand**

6 Plaintiff, a citizen of Nevada, moves for remand arguing that Harris is also a Nevada
7 citizen and destroys diversity.⁴ (Mot. Remand at 7, ECF No. 9). Twin City does not dispute
8 that Harris is a Nevada citizen but argues that Harris was fraudulently joined in this action and
9 its citizenship should be ignored for purposes of subject matter jurisdiction. (Resp. Mot
10 Remand at 2, ECF No. 10).

11 From the face of the Complaint, it is clear that the Court is without subject matter
12 jurisdiction. Federal question jurisdiction is not at issue as all claims arise under state law. (*See*
13 Compl. ¶¶ 45–71, Ex. to 2d Am. Pet. Removal, ECF No. 20-1). Diversity jurisdiction is not
14 satisfied because Plaintiff and Harris are Nevada citizens. (*Id.* ¶¶ 1, 3). Notwithstanding the
15 Court's lack of subject matter jurisdiction, Twin City raises the doctrine of fraudulent joinder to
16 support this Court's retention of the case. (Twin City Resp. at 2).

17 "Fraudulent joinder is a term of art." *McCabe v. Gen. Foods. Corp.*, 811 F.2d 1336,
18 1339 (9th Cir. 1987). Joinder is fraudulent, for the purposes of determining subject matter
19 jurisdiction, if "the plaintiff fails to state a cause of action against a resident defendant, and the
20 failure is obvious according to the settled rules of the state." *Id.* (citing Moore's Federal

21
22 ⁴ Plaintiff also argues that Twin City lacked standing to remove this case to federal court because at the time of
23 removal, April 9, 2019, Twin City had not yet been properly served under NRS 680A.250(3). (Mot. Remand at
24 9); NRS 680A.250(3) (providing that "[s]ervice of such process against a foreign or alien insurer must be made
25 only by service thereof upon the Commissioner."). In its Amended Response, Twin City explains that it was
served through the Nevada Insurance Commissioner on June 28, 2019, pursuant to NRS 680.260(2). (Mot. Leave
Suppl. Resp. at 2, ECF No. 21); NRS 680.260(2) ("Service of process against an insurer for whom the
Commissioner is attorney must be made by delivering to and leaving with the Commissioner . . . two copies of
the process, together with the fee therefor as specified in NRS 680B.010, taxable as costs in the action . . .").
Accordingly, this argument is moot and the Court will not consider it.

1 Practice (1986) ¶ O.161[2]). When making this determination, the court may “pierc[e] the
2 pleadings and consider[] summary judgment-type evidence such as affidavits and deposition
3 testimony.” *Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1068 (9th Cir. 2001) (quoting
4 *Cavallini v. State Farm Mutual Auto Ins. Co.*, 44 F.3d 256, 263 (5th Cir. 1995)). Where joinder
5 of a non-diverse defendant is deemed fraudulent, “the defendant’s presence in the lawsuit is
6 ignored for purposes of determining diversity.” *Id.* at 1067.

7 Here, Plaintiff’s Complaint sets forth one claim of negligence against Harris. “[T]o
8 prevail on a negligence claim, a plaintiff must establish four elements: (1) the existence of a
9 duty of care, (2) breach of that duty, (3) legal causation, and (4) damages.” *Sanchez ex rel.*
10 *Sanchez v. Wal-Mart Stores, Inc.*, 221 P.3d 1276, 1280 (Nev. 2009). In Nevada, the statute of
11 limitations for a negligence claim is two years. NRS 11.190(4)(e). Further, a negligence cause
12 of action accrues “when the wrong occurs and a party sustains injuries for which relief could be
13 sought,” and “the injured party discovers or reasonably should have discovered facts supporting
14 a cause of action.” *Petersen v. Bruen*, 792 P.2d 18, 20 (Nev. 1990).

15 Plaintiff’s Complaint alleges that on December 12, 2013, Twin City denied coverage for
16 the Underlying Action for two reasons, the first reason being that notice of the claim was
17 untimely. (Compl. ¶¶ 33, 34). Plaintiff further alleges that “[d]espite being aware of the
18 [Underlying Action] from the beginning, Harris Insurance did not submit a claim to Twin City
19 on [Plaintiff’s] behalf until February 25, 2013.” (*Id.* ¶ 67). Thus, Harris “breached its duty of
20 care to [Plaintiff] by failing to ensure that a timely claim was submitted to Twin City.” (*Id.*
21 ¶ 68).

22 Twin City maintains that “the allegations of the Complaint make clear that the
23 negligence cause of action against Harris accrued no later than December 12, 2013, more than
24 five years before [Plaintiff] brought its claim against Harris.” (Resp. Mot. Remand at 8).
25 Indeed, a negligence cause of action accrues when “the wrong occurs,” “a party sustains

1 injuries for which relief could be sought,” and “the injured party discovers or reasonably should
2 have discovered facts supporting” the negligence claim. *Petersen v. Bruen*, 792 P.2d 18, 20
3 (Nev. 1990).

4 Plaintiff cites *Walker v. Am. Bankers Ins. Grp.*, 836 P.2d 59 (Nev. 1992), for the
5 proposition that “when an insurer initially denies coverage under a policy, the limitations
6 period for filing a lawsuit is tolled while the parties continue negotiating whether the coverage
7 exists.” (Mot. Remand at 9). Plaintiff alleges that “[o]n April 17, 2018, after the [Underlying
8 Action] settled, [Plaintiff] renewed its claim with Twin City.” (Compl. ¶ 38). Plaintiff asserts
9 that the parties continued negotiating until March 1, 2019, when Twin City “finally and
10 officially” denied Plaintiff’s claim as untimely. (*Id.* ¶ 43); (Mot. Remand at 11). Thus, Plaintiff
11 maintains that March 1, 2019, is the date on which its negligence claim against Harris accrued.
12 As discussed below, Plaintiff’s reliance on *Walker* is misplaced. (*Id.* at 10).

13 In *Walker*, after the insurer issued a formal denial of liability, the insurer’s adjuster
14 advised the insured, “[a]s soon as I hear word from [the insurer] in regards to the
15 *reconsideration of this matter*, I will advise you accordingly.” *Walker*, 836 P.2d at 63
16 (emphasis added). Later, in correspondence to the insured’s attorney, the insurer’s adjuster
17 stated: “My principal, [insurer] has instructed us to *reopen our file* and handle this matter on
18 their behalf with your offices, specifically in regards to the personal property claim.” *Id.*
19 (emphasis added). “Similar correspondence and negotiations between the parties continued
20 until [the insurer] filed its complaint for declaratory relief.” *Id.* The Nevada Supreme Court
21 concluded that the parties continued to negotiate the insured’s claim until the date on which the
22 insurer filed its complaint for declaratory relief. *Id.* The court held that the “period of
23 limitation was tolled until [the date of the complaint], and, consequently, does not bar [the
24 insured] from suing to recover for his personal property losses.” *Id.*

1 In the present case, Plaintiff does not allege that its insurer, Twin City, made statements
2 similar to those in *Walker* regarding the reconsideration or reopening of its claim file. Instead,
3 Plaintiff asserts the December 12, 2013 denial letter invited Plaintiff to engage in further
4 negotiations about whether coverage existed because the letter stated: “If you believe our
5 analysis is incorrect, please let us know.” (Mot. Remand at 1011). The Court does not agree.
6 As Twin City argues, a request that an insured advise if it disagrees with the insurer’s position
7 does not change a denial of coverage into an open-ended discussion. (Resp. Mot. Remand
8 at 10). Additionally, even if the denial letter had invited Plaintiff to engage in further
9 negotiations, Plaintiff’s allegations indicate that it did not respond to this invitation until April
10 2018—more than four years after the 2013 denial letter. (Compl. ¶ 38). Thus, no negotiations
11 took place during that period of time. By April 2018, the statute of limitations had long run and
12 there was nothing to toll. As such, *Walker* does not apply.

13 In short, Plaintiff’s claim accrued on December 12, 2013, and under settled Nevada law,
14 the negligence claim brought against Harris on March 7, 2019, is time-barred. Accordingly, the
15 doctrine of fraudulent joinder applies, and the Court will ignore Harris’s citizenship for the
16 purposes of diversity jurisdiction. Plaintiff’s Motion to Remand is denied.

17 **B. Twin City’s Motion to Dismiss**

18 Twin City moves to dismiss arguing that Plaintiff has failed to state a claim upon which
19 relief can be granted. (*See* Twin City Mot. Dismiss (“MTD”) 7:10–22, ECF No. 8). More
20 specifically, Twin City argues that Plaintiff’s breach of contract claim cannot prevail because
21 Plaintiff failed to provide notice of the Underlying Action within the requisite reporting period
22 set forth by the Policy. (*Id.* at 7). Further, “[b]ecause Twin City’s denial of coverage was
23 correct, the claims for breach of the duty of good faith and fair dealing and for bad faith must
24 also be dismissed.” (*Id.*). The Court will address each of these claims in turn.

25 ///

1 **1. Breach of Contract**

2 To state a breach of contract claim, a plaintiff must allege: (1) the existence of a valid
3 contract; (2) a breach by the defendant; and (3) damages resulting from defendant's breach.
4 *Saini v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 919–20 (D. Nev. 2006); *see Bernard v. Rockhill*
5 *Dev. Co.*, 734 P.2d 1238, 1240 (Nev. 1987).

6 Under Nevada law, insurance policies are contracts, which must be enforced according
7 to their terms. *Continental Cas. Co. v. Summerfield*, 482 P.2d 308, 310 (Nev. 1971). The
8 starting point for the interpretation of any contract is the plain language of the contract.
9 *McDaniel v. Sierra Health and Life Ins. Co., Inc.*, 53 P.3d 904 (Nev. 2002). When a contract
10 contains clear and unequivocal provisions, those provisions shall be construed to their usual
11 and ordinary meaning. *Dickenson v. Nevada*, 877 P.2d 1059, 1061 (Nev. 1994). Then, using
12 the plain language of the contract, the court shall effectuate the intent of the parties, which may
13 be determined in light of the surrounding circumstances. *See NGA # 2 Ltd. Liab. Co. v. Rains*,
14 946 P.2d 163 (Nev. 1997); *see also Burrows v. Progressive Casualty Ins.*, 820 P.2d 748, 749
15 (Nev. 1991). “In the absence of ambiguity, contract interpretation is an issue of law for the
16 court, and may be decided on a motion to dismiss.” *Keife v. Metro. Life Ins. Co.*, 797 F. Supp.
17 2d 1072, 1075 (D. Nev. 2011) (citing *P.J. Maffei Bldg. Wrecking Corp. v. United States*, 732
18 F.2d 913, 916 (Fed. Cir. 1984)).

19 Here, the parties do not dispute the existence of a valid contract. Rather, in its Motion to
20 Dismiss, Twin City argues that the 2011 Policy does not afford coverage for the Underlying
21 Action because Plaintiff failed to provide notice of the Underlying Action to Twin City within
22 sixty days of the expiration of the Policy Period. (Twin City MTD at 8). Further, Twin City
23 asserts the Underlying Action is an “Entity Claim” first made during the 2011 Policy’s Policy
24 Period, and therefore the 2011 Policy is the only policy that can apply. (*Id.*). As such, Plaintiff
25 is not entitled to coverage under the 2012 Policy. (*Id.*). Additionally, Twin City contends that

1 the “notice-prejudice” rule does not apply to policies like the ones at issue here—that is,
2 “claims-made-and-reported” policies. (*Id.*).

3 In response, Plaintiff asserts that its notice of the Underlying Action was timely because
4 it was reported as soon as practicable and within the Policy Period. (Pl.’s Resp. Twin City
5 MTD 7:19–22, ECF No. 12). Further, Plaintiff maintains that, contrary to Twin City’s
6 assertions, the “notice-prejudice” rule applies. (*Id.*). Therefore, because Twin City was not
7 prejudiced by the timing of the claim’s submission, Twin City cannot deny coverage on the
8 basis of untimeliness. (*Id.* 1113).

9 (a) “as soon as practicable”

10 The 2011 Policy provided, in relevant part:

11 As a condition precedent to coverage under this Policy, the Insureds shall give the
12 Insurer written notice of any Claim as soon as practicable after a Notice Manager
13 becomes aware of such Claim, but in no event later than sixty (60) calendar days
14 after the termination of the Policy Period, or any Extended Reporting Period as
described in Section IX.

15 (2011 Policy at 13, Ex. 1 to Twin City MTD, ECF No. 8-1). The language “as soon as
16 practicable” does not mean immediate; instead, it “call[s] for notice within a reasonable length
17 of time under all facts and circumstances of each particular case.” *Las Vegas Metro. Police*
18 *Dep’t v. Coregis Ins. Co.*, 256 P.3d 958, 962 n.4 (Nev. 2011) (quoting *American Fidelity Fire*
19 *Ins. v. Adams*, 625 P.2d 88, 89 (Nev. 1981)).

20 Plaintiff alleges that its claim was reported as soon as practicable under the
21 circumstances because at the time the Underlying Action began, Plaintiff was under the
22 reasonable belief that “it was a simple payment dispute between Cashman and CAM that would
23 not justify coverage under the Policy.” (Pl.’s Resp. Twin City MTD at 8); (Compl. ¶ 27).
24 Further, once Plaintiff “learned of the facts and allegations justifying coverage under the
25 Policy,” Harris submitted the claim to Twin City on Plaintiff’s behalf. (Pl.’s Resp. Twin City

1 MTD at 8). Plaintiff asserts that its allegations must be accepted as true and that determining
2 whether notice of a claim was reported “as soon as practicable is a fact-intensive inquiry that
3 should be left to the jury.” (*Id.*) (citing *Food Mkt. Merch., Inc. v. Scottsdale Indem. Co.*, 857
4 F.3d 783, 786 (8th Cir. 2017)).

5 However, even accepting Plaintiff’s position that it submitted its claim as soon as
6 practicable, what the 2011 Policy required was written notice of any claim “as soon as
7 practicable, *but in no event later than sixty (60) calendar days after the termination of the*
8 *Policy Period. . . .*” (2011 Policy at 13) (emphasis added). Notably, the Policy Period for the
9 2011 Policy was March 1, 2011 through March 1, 2012. Part III.B.1(b), *infra*. Thus,
10 accounting for the sixty-day grace period, notice of the Underlying Action should have been
11 provided to Twin City in written form by April 30, 2012, at the latest. Plaintiff did not file its
12 claim until February 25, 2013. As such, Plaintiff’s first argument is unavailing.

13 **(b) the Policy Period and renewal of the 2011 Policy**

14 Twin City maintains that neither the 2011 Policy nor the 2012 Policy affords coverage
15 for the Underlying Action. Each of the policies is a “claims-made-and-reported” policy.⁵ As
16 such, two requirements must be met before coverage can exist. First, the “Entity Claim”—
17 defined as a “civil proceeding . . . commenced by the filing of a complaint”—must be “first
18

19 ⁵ As the Nevada Supreme Court explained in *Physicians Ins. Co. of Wisconsin v. Williams*, 279 P.3d 174, 176
20 (Nev. 2012), for coverage under a claims-made-and-reported policy, a claim must be made and reported within
21 the policy period. In addition, the court explained the distinction between “occurrence” policies and claims-
made-and-reported policies as follows:

22 An occurrence-based policy provides broader coverage but at greater cost to the insured than a
23 claims-made policy. Under an occurrence policy, ‘it is irrelevant whether the resulting claim is
24 brought against the insured during or after the policy period, as long as the injury-causing event
happens during the policy period.’ By contrast, the event that invokes coverage under a “claims
25 made” policy is transmittal of notice of the claim [during the policy period] to the insurance
carrier.’

Id. (citations omitted).

1 made” within the Policy Period. Second, proper written notice must be provided within sixty
2 days after the termination of the Policy Period.

3 Regarding the first requirement, Cashman filed its complaint against Plaintiff on
4 September 30, 2011, and Plaintiff was served on October 6, 2011. (Acceptance of Service, Ex.
5 6 to Twin City MTD, ECF No. 8-6). The Underlying Action is therefore an Entity Claim “first
6 made” no later than October 6, 2011—that is, during the Policy Period of the 2011 Policy (*i.e.*,
7 March 1, 2011 to March 1, 2012). Twin City thus concludes that the only policy that can apply
8 to the Underlying Action is the 2011 Policy.

9 In response, Plaintiff argues that the applicable Policy Period was not March 1, 2011 to
10 March 1, 2012, but rather March 1, 2011 to March 1, 2013. According to Plaintiff, the 2012
11 Policy constituted a “renewal” of the 2011 Policy. Plaintiff cites a number of cases including
12 *Cast Steel Prod., Inc. v. Admiral Ins. Co.*, 348 F.3d 1298, 1303 (11th Cir. 2003), for the
13 proposition that if a claims-made-and-reported policy is renewed, then the policy period for
14 reporting the claim continues for the duration of the renewal. If true, it would mean that
15 Plaintiff’s February 23, 2013 notice of the Underlying Action was not untimely. Nevertheless,
16 for the reasons discussed below, the Court rejects Plaintiff’s argument.

17 In *Cast Steel*, the insured brought an action for declaration that either (or both) of its
18 claims-made-and-reported policies covered a defective product claim that accrued at the
19 conclusion of the initial policy period but was not reported until the start of the subsequent
20 policy period. *Cast Steel*, 348 F.3d at 1299–1300. The insured argued that because the initial
21 policy automatically extended the claims reporting period upon cancellation or non-renewal of
22 the policy, but was silent as to whether renewal of the policy would provide the same reporting
23 extension, an unresolved ambiguity existed. *Id.* at 1299. In finding for the insured, the
24 Eleventh Circuit noted that the two policies at issue required reporting prior to the expiration of
25 the policy, and thus “did not provide the insured with a grace-period after expiration of the

1 policy to report claims.” *Id.* at 1303. The court also pointed out that the insured had asked its
2 broker to submit notice of the claim to the insurer three months before the initial policy expired,
3 but the broker failed to do so until just hours after the initial policy had expired.” *Id.* at 1303.

4 The court recognized that *Pantropic Power Prod., Inc. v. Fireman’s Fund Ins. Co.*, 141
5 F. Supp. 2d 1366, 1368 (S.D. Fla. 2001), a prior decision affirmed by the Eleventh Circuit, had
6 rejected the argument advanced by the insured in *Cast Steel*, but explained that the policy at
7 issue there had “a 60-day grace period.” *Id.* at 1302. The *Cast Steel* court found that it would
8 be “illogical and inequitable” to deny coverage, “*particularly in the scenario we are faced with*
9 *here.*” *Id.* at 130304 (emphasis added).

10 Unlike the policies in *Cast Steel*, here the 2011 Policy included a sixty-day period
11 allowing Plaintiff to report claims “first made” during the Policy Period. Moreover, the present
12 case does not present a scenario like that in *Cast Steel* because in that case, the insured’s claim
13 was reported just hours after the initial policy expired. In contrast, Plaintiff reported its claim
14 to Twin City several months after termination of the Policy Period.

15 Additionally, Plaintiff’s argument is contrary to the language of the 2011 Policy which
16 specifically defines the Policy Period as a period that ends on its Expiration Date—March 1,
17 2012. Under Nevada law, insurance policies are contracts, which must be enforced according
18 to their terms. *Continental Cas. Co. v. Summerfield*, 482 P.2d 308, 310 (Nev.1971). Moreover,
19 courts “will not rewrite contract provisions that are otherwise unambiguous. In addition,
20 [courts] will not increase an obligation to the insured where such was intentionally and
21 unambiguously limited by the parties. *Farmers Ins. Grp. v. Stonik By & Through Stonik*, 867
22 P.2d 389, 391 (Nev. 1994) (citing *Senteney v. Fire Ins. Exchange*, 707 P.2d 1149 (Nev. 1985)).
23 By extending the 2011 Policy Period as Plaintiff suggests, the Court would be improperly
24 altering the terms of the policy. *Canfora v. Coast Hotels & Casinos, Inc.*, 121 P.3d 599, 603
25

1 (Nev. 2005) (“The court has no authority to alter the terms of an unambiguous contract.”). As
2 such, this argument fails.

3 Next, Plaintiff asserts that “the Policy’s language also supports the conclusion that a
4 claim incurred during the initial policy period can be reported during the renewed policy
5 period.” (Pl.’s Resp. 10). Plaintiff points to Section IX of the 2011 Policy, titled “Extended
6 Reporting Period,” which states in relevant part: “If any Liability Coverage Part is cancelled or
7 non-renewed for any reason other than non-payment of premium, the Insureds shall have the
8 right to elect an extension of time to report claims under such liability Coverage Part (the
9 “Extended Reporting Period”).” (2011 Policy at 13). Plaintiff argues this provision allows the
10 insured to pay an additional premium to extend to reporting period if the policy is either
11 cancelled or non-renewed. (Pl.’s Resp. 10). On this basis, Plaintiff concludes that because “the
12 extension is not necessary if the policy remains in force, including renewals,” this implies that
13 renewals extend the Policy Period. (*Id.*). However, this argument is not persuasive. Indeed,
14 this very proposition was addressed and rejected in *Checkrite Ltd., Inc. v. Illinois Nat. Ins. Co.*,
15 95 F. Supp. 2d 180 (S.D.N.Y. 2000). There, the court emphasized that the Extended Reporting
16 Period provision “does not support a reading into the contract of an ‘inherent’ extended
17 reporting period in event of renewal.” *Id.* at 193. Rather, the provision “sets out specific
18 circumstances and terms for when an insured may obtain additional reporting time, *i.e.*, where
19 there is nonrenewal or cancellation, and only in exchange for additional premium dollars.” *Id.*
20 Additionally, the court explained the rationale for providing this option only in the case of
21 cancellation or nonrenewal:

22 An insured who cancels or does not renew faces a risk of coverage gaps that can
23 result from switching to an occurrence policy or to another claims-made policy.
24 A gap can occur where an insured switches to an occurrence policy because there
25 will be no coverage for claims based on acts that happened during the claims-
made policy but before the occurrence policy. A gap can occur where the insured
switches to another claims-made policy because the subsequent carrier might
impose a retroactive date that limits coverage for prior acts. An extended

1 reporting period option gives the insured the ability to protect itself in these
2 situations. Where the insured simply renews its policy, however, it does not face
the same problems of coverage gap.

3 *Id.* (citing *Ehrgood v. Coregis Insurance Co.*, 59 F. Supp. 2d 438, 446 (M.D. Pa. 1998)).

4 Here, it is not disputed that the 2011 Policy was not cancelled or non-renewed, and therefore no
5 Extended Reporting Period was ever issued. Moreover, Plaintiff faced no risk of a coverage
6 gap and therefore, there was no need for an Extended Reporting Period. As such, Plaintiff's
7 argument is without support.

8 Lastly, Plaintiff indicates that the 2011 Policy and the 2012 Policy "carried the same
9 policy number and contained the exact same coverage provisions." (Pl.'s Resp. at 11).

10 Therefore, Plaintiff submits that the Policies created apparently seamless coverage over two
11 periods and the Policy Period for reporting Plaintiff's claim did not end until March 1, 2013.

12 The Court disagrees. Rather, "courts have held that renewal of policies does not create a single
13 policy period, even if all the policies have the same policy number." *Clarendon Nat'l Ins. Co.*
14 *v. Foley & Bezek, LLP*, 2001 WL 1223486, at *3 (C.D. Cal. July 26, 2001) (citations omitted).

15 In sum, because Plaintiff's renewal of the 2011 Policy did not extend the Policy Period to
16 March 1, 2013, Plaintiff's February 2013 notice was untimely. Accordingly, Plaintiff has not
17 shown that Twin City's denial of coverage for the Underlying Action constitutes a breach of
18 contract.

19 (c) ***the notice-prejudice rule***

20 In *Las Vegas Metro. Police Dep't v. Coregis Ins. Co.*, the Nevada Supreme Court
21 announced that

22 [i]n accordance with the majority of jurisdictions and with the express language
23 of [Nevada Administrative Code] 686A.660(4), we adopt a notice-prejudice rule:
24 in order for an insurer to deny coverage of a claim based on the insured party's
25 late notice of that claim, the insurer must show (1) that the notice was late and (2)
that it has been prejudiced by the late notice.

1 *Las Vegas Metro. Police Dep't v. Coregis Ins. Co.*, 256 P.3d 958, 963, 965 (Nev. 2011). While
2 Nevada has adopted this rule with respect to “occurrence” policies, *id.*, the Nevada Supreme
3 Court has not reached the question of whether the notice-prejudice rule extends to claims-
4 made-and-reported policies. *See Williams*, 279 P.3d at 178 n.4. Nevertheless, several courts,
5 including the Ninth Circuit, have held that the notice-prejudice rule does not apply to claims-
6 made-and-reported policies because, in that context, “notice is the event that actually triggers
7 coverage.” *Pension Trust Fund v. Federal Ins. Co.*, 307 F.3d 944, 956–57 (9th Cir. 2002); *Trek*
8 *Bicycle Corp. v. Mitsui Sumitomo Ins. Co., Ltd.*, No. 5:05-cv-44, 2006 WL 1642298, at *3
9 (W.D. Ky. Jun. 7, 2006) (declining to extend Kentucky’s notice-prejudice rule to claims-made-
10 and-reported policies); *PIMG, Inc. v. Carolina Cas. Ins. Co.*, No. 09-cv-2022-BEN-CAB, 2010
11 WL 11594809, at *3 (S.D. Cal. Mar. 5, 2010) (“Courts have consistently held, however, that
12 the Notice-Prejudice Rule does not apply to ‘claims made and reported policies.’”).

13 Here, Plaintiff does not contend that the notice-prejudice rule applies to claims-made-
14 and-reported policies when a claim is reported *outside* the policy period. However, Plaintiff
15 maintains that the notice-prejudice rule applies to claims-made-and-reported policies when a
16 claim is reported *within* the policy period. On this basis, Plaintiff argues that because the
17 Policy Period for the 2011 Policy was March 1, 2011, to March 1, 2013, and Plaintiff’s claim
18 was reported on February 25, 2013, then its claim was reported *within* the Policy Period and the
19 notice-prejudice rule applies. Plaintiff thus concludes Twin City must demonstrate prejudice
20 before it can deny coverage.

21 Because Plaintiff’s argument is based on the assumption that Plaintiff’s claim was
22 reported within the Policy Period, the Court need not address it. As indicated in Part III.B.1(b)
23 *supra*, the Policy Period for the 2011 Policy was from March 1, 2011, to March 1, 2012.
24 Plaintiff’s policy renewal and the issuance of the 2012 Policy did not extend the Policy Period
25

1 until March 1, 2013. As such, Plaintiff's claim was not reported within the Policy Period and
2 this argument fails.

3 In sum, while Plaintiff's Complaint alleges that "Twin City breached the Policy by
4 wrongfully denying [Plaintiff's] claim," (Compl. ¶ 47), the Court is not "required to accept as
5 true conclusory allegations that are contradicted by documents referred to in the complaint, and
6 [the Court does] not necessarily assume the truth of legal conclusions merely because they are
7 cast in the form of factual allegations." *Paulsen v. CNF Inc.*, 559 F.3d 1061, 1071 (9th Cir.
8 2009). The terms and conditions contained in the 2011 Policy contradict Plaintiff's contention
9 that it timely provided notice of the Underlying Action. Thus, Plaintiff has failed to state a
10 claim upon which relief can be granted. Accordingly, Twin City's Motion to Dismiss is
11 granted with respect to Plaintiff's breach of contract claim.

12 **2. Bad Faith and Breach of the Implied Covenant of Good Faith and Fair**
13 **Dealing**

14 Twin City argues that "[b]ecause there is no coverage for the Underlying Action under
15 the Policies, then Plaintiff's claims for bad faith and breach of the implied covenant of good
16 faith and fair dealing should also be dismissed." (Twin City MTD at 17). The Court addresses
17 each claim *seriatim*.

18 **(a) *breach of the implied covenant of good faith and fair dealing***

19 In Nevada, "[e]very contract imposes upon each party a duty of good faith and fair
20 dealing in its performance and execution." *A.C. Shaw Constr., Inc. v. Washoe Cnty.*, 784 P.2d
21 9, 9 (Nev. 1989). This implied covenant requires that parties "act in a manner that is faithful to
22 the purpose of the contract and the justified expectations of the other party." *Morris v. Bank of*
23 *Am. Nev.*, 886 P.2d 454, 457 (Nev. 1994) (internal quotation marks omitted). "When one party
24 performs a contract in a manner that is unfaithful to the purpose of the contract . . . damages
25 may be awarded against the party who does not act in good faith." *Hilton Hotels v. Butch Lewis*

1 *Prods.*, 808 P.2d 919, 923 (Nev. 1991). A breach of the duty of good faith and fair dealing can
2 occur “[w]here the terms of a contract are literally complied with but one party to the contract
3 deliberately contravenes the intention and spirit of the contract.” *Id.* at 922–23.

4 Here, Plaintiff’s Complaint alleges “Twin City breached its duty [of good faith and fair
5 dealing] through the conduct described in the preceding paragraphs which was unfaithful to the
6 purpose of the contract.” (Compl. ¶ 53). Plaintiff further alleges that “[a]s a direct result of
7 Twin City’s actions, [Plaintiff’s] justified expectations have been denied, and [Plaintiff] has
8 been damaged in excess of \$10,000.” (*Id.* ¶ 54). Other than conclusory assertions, the
9 Complaint fails to allege facts showing that Twin City’s decision to deny coverage went against
10 the intention and spirit of the contract and that Plaintiff’s expectations were justified. The
11 Complaint fails to state a cause of action for breach of the covenant of good faith and fair
12 dealing. Accordingly, Plaintiff’s claim for breach of the implied covenant of good faith and
13 fair dealing is dismissed.

14 **(b) bad faith**

15 To assert a claim for bad faith, a plaintiff must show: (1) an insurer’s denial of (or
16 refusal to pay) an insured’s claim; (2) without any reasonable basis; and (3) the insurer’s
17 knowledge or reckless disregard of the lack of a reasonable basis for its claim denial. *Sgrillo v.*
18 *Geico Cas. Co.*, 323 F. Supp. 3d 1167, 1170 (D. Nev. 2018). Bad faith is “an actual or implied
19 awareness of the absence of a reasonable basis for denying benefits of the [insurance] policy.”
20 *Am. Excess Ins. Co. v. MGM*, 729 P.2d 1352, 1354–55 (Nev. 1986). An insurer is not liable for
21 bad faith so long as it had a reasonable basis to deny coverage. *Pioneer Chlor Alkali Co., Inc. v.*
22 *National Union Fire Ins. Co. of Pittsburgh, Pennsylvania*, 863 F. Supp. 1237, 1242 (D. Nev.
23 1994).

24 As discussed in Part III.B.1 *supra*, Twin City did not wrongfully deny coverage for the
25 Underlying Action. Rather, Plaintiff failed to timely report the Underlying Action to Twin

1 City, thus barring coverage. Under these circumstances, Plaintiff has not provided sufficient
2 factual matter showing that Twin City’s denial of coverage was without reasonable basis.
3 Accordingly, Plaintiff’s cause of action for bad faith fails to state a claim upon which relief can
4 be granted. This claim is dismissed.

5 **C. Harris’s Motion to Dismiss**

6 Harris moves for dismissal of Plaintiff’s negligence claim, arguing that the applicable
7 two-year statute of limitations has expired and therefore Plaintiff’s claim is time-barred.⁶
8 (Harris MTD at 7, ECF No. 22). According to Harris, the stature of limitations on Plaintiff’s
9 claim began to run once Twin City denied Plaintiff’s claim for coverage and “expressly cited to
10 untimeliness as the reason for that denial.” (*Id.*). Harris points to allegations in the Complaint
11 which provide that Twin City denied coverage on December 12, 2013, and that “Twin City
12 asserted that [Plaintiff’s] claim was untimely.” (*Id.* at 8) (citing Compl. ¶¶ 33, 34). As such,
13 Plaintiff “had actual notice of Harris’s alleged negligence in filing an untimely claim as early as
14 December 12, 2013,” yet failed to bring the present cause of action until March 2019—more
15 than five years later. (*Id.*). For the reasons explained in Part III.A *supra*, the Court agrees.
16 Plaintiff’s negligence cause of action against Harris is time-barred and must be dismissed as a
17 matter of law. Accordingly, Harris’s Motion to Dismiss is granted.

18 ///

19 ///

21 ⁶ Alternatively, Harris argues that “[b]ecause [Plaintiff] will not suffer any damages unless or until this Court
22 makes a determination that the claim was submitted untimely, [Plaintiff’s] singular claim against Harris for
23 professional negligence is premature as a matter of law.” (Harris MTD at 5). In Part III.B.1 *supra*, the Court
24 determined Plaintiff’s notice of the Underlying Action was not timely provided to Twin City, thus Plaintiff’s
25 claim is not premature. Moreover, in asserting that Plaintiff’s negligence claim is premature, Harris relies on
cases addressing legal malpractice claims. (*Id.* at 5, 6) (citing *Semenza v. Nevada Medical Liability Ins. Co.*, 765
P.2d 184 (Nev. 1988); *Jewett v. Patt*, 591 P.2d 1151 (Nev. 1979)). Harris does not provide analysis showing that
legal malpractice case law applies to the instant case. Nor does Plaintiff’s Complaint assert a claim for
professional negligence. As such, the Court will not address this argument. *Kor Media Group, LLC v. Green*,
294 F.R.D. 579, 582 n.3 (D. Nev. 2013) (courts only address arguments that are meaningfully developed).

1 **D. Leave to Amend**

2 Rule 15(a)(2) of the Federal Rules of Civil Procedure permits courts to “freely give
3 leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). The Ninth Circuit “ha[s]
4 held that in dismissing for failure to state a claim under Rule 12(b)(6), ‘a district court should
5 grant leave to amend even if no request to amend the pleading was made, unless it determines
6 that the pleading could not possibly be cured by the allegation of other facts.’” *Lopez v. Smith*,
7 203 F.3d 1122, 1127 (9th Cir. 2000) (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir.
8 1995)).

9 The Court finds that Plaintiff may be able to plead additional facts to support Plaintiff’s
10 first, second, and third causes of action against Twin City. Further, the Court finds that
11 Plaintiff may be able to plead additional facts to support Plaintiff’s fourth cause of action
12 against Harris. Accordingly, because the Court finds that Plaintiff may be able to plead
13 additional facts to support these causes of action, the Court will grant Plaintiff leave to file an
14 amended complaint.

15 Plaintiff shall file its amended complaint within twenty-one (21) days of the date of this
16 Order if it can allege sufficient facts that plausibly establish Plaintiff’s first, second, and third
17 causes of action against Twin City; and Plaintiff’s fourth cause of action against Harris. Failure
18 to file an amended complaint by this date shall result in the Court dismissing these claims with
19 prejudice.

20 **E. Harris’s Motion to Strike**

21 Harris moves to strike documents attached to Plaintiff’s Response to Harris’s Motion to
22 Dismiss. (Mot. Strike 4:235:7, ECF No. 25). Harris also moves to strike certain “allegations
23 that were not present in [Plaintiff’s] Complaint.” (*Id.* 2:17).

24 On its own initiative or upon motion, “[t]he court may strike from a pleading an
25 insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.” Fed. R.

1 Civ. P. 12(f). Rule 7(a) lists the six types of “pleadings” that may be filed in federal court: (1) a
2 complaint; (2) an answer to a complaint; (3) an answer to a counterclaim designated as a
3 counterclaim; (4) an answer to a crossclaim; (5) a third-party complaint; and (6) an answer to a
4 third-party complaint. Fed. R. Civ. P. 7(a). A seventh pleading—a reply to an answer—may be
5 filed, but only if the court orders one. *Id.* “Rule 7(a) exhaustively enumerates the different
6 ‘pleadings’ available under the civil rules[.]” *ISC Holding AG v. Nobel Biocare Fin. AG*, 688
7 F.3d 98, 112 (2d Cir. 2012).

8 Here, Harris argues that “[b]ecause [Plaintiff] is prohibited from including extraneous
9 documents or allegations in response to a Motion to Dismiss, yet did so without invoking any
10 of the acceptable or recognized exceptions, all such extraneous references and documents
11 should be stricken[.]” (Mot. Strike 5:9–13). However, Plaintiff’s Response and its exhibits are
12 not pleadings, and therefore, cannot be stricken under Rule 7(a). Accordingly, Harris’s Motion
13 to Strike is denied.

14 **IV. CONCLUSION**

15 **IT IS HEREBY ORDERED** that Plaintiff’s Motion to Remand, (ECF No. 9), is
16 **DENIED.**

17 **IT IS FURTHER ORDERED** that Twin City’s Motion to Dismiss, (ECF No. 8), is
18 **GRANTED.**

19 **IT IS FURTHER ORDERED** that Twin City’s Motion for Leave to Supplement its
20 Response to the Motion to Remand, (ECF Nos. 18, 21), is **GRANTED.**

21 **IT IS FURTHER ORDERED** that Harris’s Motion to Dismiss, (ECF No. 22), is
22 **GRANTED.**


23 ///

24 ///

IT IS FURTHER ORDERED that Harris's Motion to Strike, (ECF No. 25), is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff is **GRANTED** leave to amend consistent with the foregoing. Plaintiff shall have twenty-one (21) days from the date of this Order to file an amended complaint. Failure to file an amended complaint by this date shall result in the Court dismissing Plaintiff's claims with prejudice.

DATED this 18 day of March, 2020.


Gloria M. Navarro, District Judge
United States District Court